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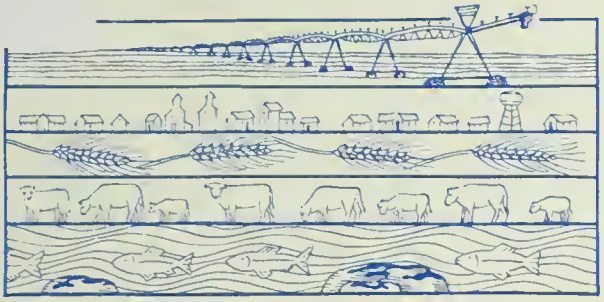

WATER RESERVATION update

MARCH 1988

WATER RESOURCES DIVISION
MONTANA DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

PURPOSE OF THE NEWSLETTER

Montana's water reservation law provides an opportunity to reserve water for future diversionary and consumptive uses as well as for maintaining stream flows for the protection of existing water rights, aquatic life, and water quality. The Water Management Bureau of the Department of Natural Resnurces and Conservation is responsible for coordinating the water reservation process. In an effort to keep water reservation applicants and other interested parties informed, the "Water Reservation Update" will be published periodically. This issue of the newsletter will present a general overview and history of the reservation process, and discuss the current water reservation proceedings in the Missouri River Basin.

AN OVERVIEW OF WATER RESERVATIONS

The policy of the State is to provide for the wise use, development, and conservation of the waters of Montana for the maximum benefit of its people with the least possible degradation of the natural aquatic environment and ecosystem. When the Montana Water Use Act was passed in 1973, the option to reserve water for future beneficial uses became an important component of Montana's water codes. Section 85-2-316, Montana Codes Annotated, allows public entities to apply to the Board of Natural Resources and Conservation to reserve water for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water. Beneficial uses are defined by law as uses of water for the benefit of the appropriator, other persons, or the public, including, but not limited to agricultural (including stockwater), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses. Since the reservation law requires that any reservation of water be in the public interest, only public entities, such as conservation districts, municipalities, and state and federal agencies are eligible to apply for a water reservation.

The central feature of the reservation law is its capacity to allow for the planning and allocation of water for future uses. The main advantage of a water reservation over individual water use permits is that once approved, the reservation sets aside water for a particular use. Those eligible to use reserved water have a longer time period (up to 30 years or more) to put the water to beneficial use and still maintain the early priority date. By comparison, water use permits must be put to beneficial use within 1 to 2 years.

In order to justify the need for a reservation, an applicant must prepare a detailed water use plan that identifies future water users and their estimated water needs. This information explains why the water must be limited to a specific future use, and why the applicant is unable to appropriate water by means of a permit. The reservation statute and rules require the applicant to fully support the purpose, need, amount, and public interest of a proposed reservation. Also, the statute assigns administrative responsibilities for reservations to the Board of Natural Resources and Conservation, which is made up of seven citizens from around the state who are appointed by the Governor.

The Montana Environmental Policy Act (MEPA) requires preparation of an environmental impact statement (EIS) for actions of state government that have the potential to create significant environmental impacts. In the case of the proposed water reservations, the EIS will examine the environmental, social, and economic impacts of the reservation.

After the EIS process is complete, DNRC will publish a notice and receive written objections to the reservation applications. If the Department determines that objections are valid, a formal contested case hearing may be held. After the contested case hearing is completed, the Board of

Natural Resources and Conservation will make its decisions on the basis of the hearing record and the EIS. Unless otherwise specified by the legislature, the priority date for a reservation is the date the Board adopts an order reserving water.

All final decisions on water reservation requests are subject to valid, prior water rights. Existing, valid water rights will not be affected. A reservation, once granted by the Board of Natural Resources and Conservation, is a water right. If applied for by a conservation district, the right is held by the district on behalf of the individual users. Landowners will then apply to the district when they are ready to put water to use. Users of reserved water receive legal authorization to use the water. That authorization cannot be taken away arbitrarily.

By law, the Board must make a review of granted reservations at least once every ten years. The Board may extend, modify, or revoke a reservation as a result of this review. This additional requirement is attached to a water reservation to assure that the long reservation development period does not result in a speculative appropriation. The Board must require diligence and monitor all reservation objectives to be sure that each reservation of water remains in the public interest. This process protects all reservations from the challenges of competing water users and provides a strong foundation for reservations in any future interstate allocation of water.

WATER RESERVATION PROCEEDINGS: A BRIEF HISTORY

Within a year of the passage of the 1973 Water Use Act, an overwhelming number of water use permit applications were submitted by energy companies for coal development in the Yellowstone Basin. The legislature viewed these large permit applications as a threat to future agricultural and municipal growth in the basin, as well as to the free-flowing status of the Yellowstone River. In response to this perceived threat, the legislature enacted the Water Moratorium Act of 1974, which suspended for four years all applications for water diversions over 20 cfs or impoundments in excess of 14,000 acre-feet. This temporary halt in the water permit appropriation process gave the state time to make full use of the reservation process. During the four-year moratorium period, 38 reservation applications were submitted, including those from 4 state agencies, 2 federal agencies, 14 conservation districts, 2 irrigation districts, and 8 municipalities. Taking into account hearings testimony and an environmental impact statement prepared by DNRC, the Board of Natural Resources and Conservation announced its final order on December 15, 1978. The Board specified priorities and amounts of water to be reserved for municipal use, instream flows, irrigation, and multipurpose storage. The implementation of this system in the Yellowstone River Basin was unprecedented in United States history. The Yellowstone River Basin is the only area of the state where water has been reserved for instream needs and future consumptive demands.

DNRC is currently in the process of reviewing reservation applications in the Upper Clark Fork Basin (above Milltown Dam). To date, DNRC has received two applications--one from the Department of Fish, Wildlife and Parks (DFWP) and one from the Granite County Conservation District. DFWP wishes to reserve instream flows in the mainstem of the Clark Fork and 17 of its tributaries. Granite County Conservation District is seeking to reserve water for irrigation needs of the county by developing storage reservoirs in the Boulder and Willow Creek drainages between Drummond and Philipsburg. A draft EIS on the reservation applications is currently being prepared by DNRC staff; the final EIS is expected to be completed in August 1988. The Board of Natural Resources and Conservation is expected to make a decision on the applications in November 1988.

WATER RESERVATION PROCEEDINGS IN THE MISSOURI RIVER BASIN

In response to concerns that the state may soon be faced with the need to participate in an interstate allocation of Missouri River streamflow, the 1985 Legislature directed that a comprehensive, basinwide proceeding be undertaken to reserve Missouri River water for future uses in Montana. A basinwide system of water reservations is felt to be a strong basis for claiming a share of the Missouri's flow. Water may be reserved in the mainstem of the Missouri River and any tributary of the Missouri. Water may also be reserved for offstream storage or from groundwater sources. All reservations granted through the current Missouri River Basin proceeding will receive a priority date of July 1, 1985.

The legislature directed DNRC to coordinate the water reservation proceeding in the Missouri River Basin. For funding and administrative purposes, the basin has been divided into three sections: upper--upstream of Canyon Ferry Dam, middle--between Canyon Ferry Dam and Fort Peck Dam, and lower--

downstream of Fort Peck Dam. Funding was provided during fiscal years 1986 and 1987 to coordinate the proceeding and assist conservation districts and municipalities in the upper basin. For fiscal years 1988 and 1989, the legislature provided funding to continue the coordination activities and to assist in preparation of applications in the middle basin. During the 1990-91 biennium, DNRC is expected to assist in preparing applications in the lower basin. Applicants qualified to reserve water above Fort Peck Dam have been given until July 1, 1989 to submit correct and complete applications to the Board of Natural Resources and Conservation. The Board must make a final decision on those applications by December 31, 1991. Applicants below Fort Peck Dam must submit correct and complete applications by July 1, 1991. The Board will announce its final order on those applications by December 31, 1993. Following is a status report of the reservation proceeding in each basin.

Upper Basin

In the upper basin (above Canyon Ferry Dam), three conservation districts have completed water reservation applications: Broadwater, Gallatin, and Jefferson. Municipal applications have been prepared for: Belgrade, Bozeman, Dillon, Three Forks, and West Yellowstone. Requests to reserve instream flows in the upper basin will be included in applications for the basin upstream of Fort Peck Dam.

Middle Basin

Work is underway on applications to reserve water for future irrigation in 18 conservation districts in the middle basin (between Canyon Ferry Dam and Fort Peck Dam). The conservation districts involved are: Big Sandy, Blaine, Cascade, Chouteau, Fergus, Garfield, Glacier, Hill, Judith Basin, Lewis & Clark, Liberty, Meagher, Petroleum, Phillips, Pondera, Teton, Toole, and Valley. In July 1987, DNRC sent water reservation questionnaires to over 500 individual landowners who had indicated an interest in reserving water for future use. So far, only 43% of the questionnaires have been returned. A total of 175 potential irrigation and/or water storage projects have been identified. In the fall of 1987, DNRC staff visited 88 of the potential projects for field inspections. The remainder of the sites will be visited this spring and summer.

The water reservations staff of DNRC has developed a screening procedure to determine the feasibility of proposed irrigation and storage projects. The procedure consists of both office screening and a field check of the site. Office screening involves an analysis of water availability (surface water or groundwater), an examination of the best available soils mapping for the field areas to determine irrigability classification, and an analysis of economic feasibility. Each potential project that survives the initial office screening for feasibility is then visited by a soil scientist and an agricultural engineer. The soil scientist evaluates the project area soils as to their suitability for irrigation. The agricultural engineer gathers information necessary to design an irrigation system for the project. After the field visit, a more detailed economic and financial feasibility analysis is completed. Projects shown to have water available, suitable soils, and a feasible irrigation system design will be included in the conservation districts' water reservation applications. The next water reservation newsletter will have a more detailed explanation of the screening process.

In addition to landowner interest surveys, two special studies have identified additional potential irrigation projects in the Missouri Basin. Projects determined feasible by the Upper Missouri Basin Cooperative Special Study and the Irrigible Lands Assessment Method may be included in the conservation districts' water reservation applications.

The U.S. Department of Agriculture (USDA), in cooperation with DNRC, conducted a study to identify economically feasible potential irrigation projects in the Missouri River Basin in Montana. The Upper Missouri River Basin Cooperative Special Study evaluated projects with greater than 1,000 acres of new irrigation or 4,000 acre-feet of storage. A total of 215 projects involving 2.4 million acres in 31 counties were investigated. After an initial screening to determine overall project feasibility and a field visit to proposed project sites, it was determined that 21 projects in 11 counties were feasible. DNRC staff plan to evaluate the methodologies used in the cooperative study and make adjustments where necessary.

To supplement findings of the Upper Missouri River Basin Cooperative Special Study, DNRC staff created the Irrigable Lands Assessment Method (ILAM) in order to predict irrigation development by individual farmers diverting water from mainstem and major tributary sources in the Missouri River Basin. ILAM uses economic, topographic, soils, climatic, agricultural, engineering, and hydrologic data to predict future irrigation development.

In the middle Missouri Basin all incorporated municipalities were contacted and asked if they were interested in preparing a water reservation application. Only twelve indicated an interest. These

municipalities are: Chester, Choteau, Conrad, Cut Bank, East Helena, Fairfield, Fort Benton, Great Falls, Lewistown, Neihart, Shelby, and Winifred. The department then contracted with Aquoneering of Laurel to prepare applications for these communities. Roger Perkins of Aquoneering has visited all the communities and is now in the process of preparing draft applications. In addition, the City of Helena has independently contracted with Hydrometrics of Helena to prepare a water reservation application.

Applications for water reservations are also expected from various state and federal agencies. The Department of Fish, Wildlife and Parks, Department of Health and Environmental Sciences, and the Bureau of Land Management are preparing applications for instream flow reservations. The Bureau of Reclamation is expected to submit an application for future consumptive needs.

Lower Basin

Although applicants in the lower basin have until July 1, 1991 to submit applications, some work has already been accomplished on those applications. The Sheridan Conservation District has completed and submitted an application to the Department. The two Roosevelt County Conservation Districts have submitted a draft application which will be completed by DNRC staff. Field work has been completed on the McCone Conservation District's application.

For additional information contact the Water Reservation staff at (406) 444-6637, 444-6693, 444-6790.

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